In the Matter of

DEPARTMENT OF VETERANS AFFAIRS
EASTERN KANSAS VA HEALTHCARE SYSTEM
LEAVENWORTH CAMPUS
LEAVENWORTH, KANSAS

and

LOCAL 1765, NATIONAL FEDERATION OF
FEDERAL EMPLOYEES, IAMAW, AFL-CIO

Case No. 12 FSIP 53

ARBITRATOR'S OPINION AND DECISION

This case was filed jointly by Local 1765, National Federation of Federal Employees, IAMAW, AFL-CIO, (Union) and the Department of Veterans Affairs, Eastern Kansas VA Healthcare System, Leavenworth Campus, Leavenworth, Kansas (Employer) with the Federal Service Impasses Panel (Panel) to consider a negotiation impasse under the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7119.

After an investigation of the request for assistance, which arises from bargaining over the impact and implementation of the Employer's decision to change the work days of an employee, the Panel directed the parties to mediation-arbitration with the undersigned. Accordingly, on July 2, 2012, a telephonic mediation-arbitration session was held with representatives of the parties. During the mediation phase, the parties addressed their interests and positions with respect to the issue, but they were unable to come to a voluntary resolution. The matter, therefore, has been submitted for arbitration. In reaching my decision, I have considered the entire record in this matter, including the parties' final offers, documents submitted during arbitration, and the parties' post-hearing written statements of position.

BACKGROUND

The Employer operates two campuses, in Leavenworth and Topeka, and 11 clinics. These facilities provide a full range of medical resources to military veterans residing in Kansas and Missouri. The Union represents approximately 250 professional

employees who work at the Leavenworth Campus and the Wyandotte and St. Joseph Clinics. Effective July 2012, the parties are covered by a new master collective-bargaining agreement between the Department of Veterans Affairs and the National Federation of Government Employees.

On March 8, 2010, the Employer notified the Union that the work schedule for one of the chaplains at the Leavenworth Campus would be changed from Monday through Friday to Tuesday through Saturday. Prior to this, "Fee Basis Chaplains" had worked Saturdays and Sundays thereby allowing employee chaplains to work a Monday through Friday tour of duty. The practice of employing Fee Basis Chaplains to cover Saturdays and Sundays was discontinued, however, while management resolved VA regulatory compliance issues; as a result, the affected chaplain's work days were changed so that he now had to work Saturdays. The complication for the chaplain was that he also was a Colonel in the Army Reserves and required to participate in military duty 1 weekend each month and 2 weeks during the year. In order for the chaplain to fulfill his military obligations on weekends, he used both military leave and annual leave to cover his absences on Saturdays.[1/] The parties engaged in some bargaining but, ultimately, the Union filed an unfair labor practice (ULP) charge with the Federal Labor Relations Authority (FLRA) on July 19, 2010; the Employer implemented the schedule change on August 15, 2010. The FLRA subsequently issued a ULP complaint and a hearing before an administrative law judge was scheduled for June 21, 2011. In lieu of a hearing, the parties signed a Memorandum of Understanding wherein the Employer agreed to restore the chaplain to his Monday through Friday tour of duty, and the parties agreed to bargain over "procedures and appropriate arrangements to mitigate any foreseeable or actual adverse impact" caused by the change in tour of duty. Negotiations led to a bargaining impasse and the parties' request for intervention by the Panel.

1/ The record reveals that, even prior to the change to a schedule that included Saturday as a regular work day, the 120 hours of military leave authorized annually was insufficient to cover the chaplain's absence from his VA position to fulfill military obligations. Therefore, a combination of military leave and annual leave typically was used by the chaplain for absences due to the performance of military duties.

ISSUE AT IMPASSE

The parties disagree over whether annual leave taken on certain Saturdays for the purpose of allowing the employee to participate in Army Reserve duty on those days should be restored.

POSITIONS OF THE PARTIES

1. The Union's Position

The Union proposes that 56 hours of annual leave used by the employee on the following Saturdays be restored: September 11, 2010, October 2, 2010, December 4, 2010, February 5, 2011, May 14, 2011, July 9, 2011 and August 6, 2011. It maintains that the Employer was well aware of the employee's military reserve duties on certain Saturdays, yet it altered his work schedule to include Saturday as a regular work day. The change created a scheduling conflict and, as a result, the employee periodically had to take annual leave to cover his Saturday absences to comply with his military drill orders on Saturdays. The 120 hours of military leave provided to the employee each fiscal year is insufficient to cover all of the employee's absences from work due to military obligations so it would have been necessary for him to take a certain amount of annual leave throughout the year to attend Army Reserve training. The change to include Saturday as a regular work day, however, meant that even more annual leave would have to be used. Documentation from the U.S. Army Human Resources Command demonstrates that the employee was scheduled to perform military duties or receive training on all of the Saturdays identified in the Union's proposal so there can be no doubt that the annual leave was used for the purposes claimed by the employee.

2. The Employer's Position

The Employer opposes the restoration of annual leave. Essentially, it disputes that the employee was adversely affected when he used annual leave on certain Saturdays to perform military reserve duties. The employee's leave record for years prior to and subsequent to the change to a Tuesday to Saturday schedule reveals that annual leave is routinely used to cover absences from work to perform military duties. The Employer acknowledges that the 120 hours of military leave provided by the Federal Government is insufficient for the employee to meet his military obligations so it is not unusual for the employee to request annual leave to cover absences due

to military obligations. Allowing the employee to recoup 56 hours of annual leave would be unfair to the many other employees who also have military reserve or National Guard obligations and must use their own leave when the 120 hours of military leave each year is not enough time to cover their absences from work. Finally, the Employer contends that if the employee was able to fulfill any of his military duties on a Monday, which would have been a non-work day during the period of time when the employee's schedule was changed to Tuesday through Saturday, he possibly could have avoided the need to take leave on a Saturday which again demonstrates that the employee did not suffer any adverse impact.

CONCLUSIONS

Having carefully considered the arguments and evidence presented in this case, I conclude that the impasse should be resolved on the basis of the Union's proposal. The nature of this dispute is somewhat unusual in that it arises from a ULP settlement agreement that requires bargaining "to mitigate any foreseeable or actual adverse impact" caused by the changes in the chaplain's tour of duty. In my view, the employee was adversely affected when he used 56 hours of annual leave to cover absences on 7 Saturdays, regular work days, so that he could meet his Army Reserve obligations. It is irrelevant whether the employee may have had available on any of those dates unused military leave which could have been used in lieu of annual leave. In this regard, the record reflects and the Employer does not dispute, the employee typically used a combination of military leave and annual leave each year because the 120 hours of military leave afforded was insufficient to cover all of the time the employee needed to be away from his civilian job to attend to military obligations. If the employee had not been scheduled for work on Saturdays, there would not have been any need for him to take leave, either military or annual. The fact is, however, that for approximately 1 year the employee had a tour of duty that included Saturday as a regular work day and he chose to use annual leave to cover his absences on those dates. If Saturday had not been a regular work day, the employee would have used 56 fewer hours of annual leave that year. The Employer mandated Saturday as a regular work day for the employee, even though it had been aware of his long-term position in the Army Reserve with its monthly weekend duty requirement. Restoring 56 hours of annual leave would mitigate the adverse impact of the Employer's change in tour of duty and, therefore, I shall order the adoption of the Union's proposal.

DECISION

The parties shall adopt the Union's proposal to restore 56 hours of annual leave to the employee.

Donna M. DiTullio

Donna M. DiTullio
Arbitrator

July 17, 2012
Washington, D.C.